



Policy Association for an Open Society

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EU Democracy Assistance through Civil Society - Reformed?

The design of the Community Financial Instruments for the first half of the Financial Perspective 2007-2013

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1. Introduction

“Democracy assistance” is not a mainstream term in EU discourse, and no Community definition or concept of a democratisation strategy is envisaged¹. On the other hand, the “promotion of human rights and democracy” has become a well established element of EU external policy, with multiple references to it at various institutional levels and financial instruments. For the purpose of this paper, democracy assistance is defined as *the policy aimed at helping third countries build institutions of democratic governance, foster public participation in democratic governance, support pluralism in the shape of multiparty politics, freedom of expression and independent media, promote and protect human rights, and work towards establishing the rule of law.*

This research centred on the reform of the EU external assistance financial instruments under which non-governmental organisations (NGOs) and other civil society actors are eligible for democracy assistance funding², with a special focus on the European Instrument for Democracy and Human Rights (EIDHR II). It also focused on problems identified elsewhere³, in particular the main obstacles to EU democracy assistance delivery by NGOs and civil society, the potential impact of the recent debate on the legal framework surrounding EIDHR and the subsequent implementation of an amended legal framework, and the role of (selected) EU member states and actors in this process. To a certain extent, the geographical scope of the research was defined by the general project outline, which covers selected third (recipient) countries (Cuba, Belarus, Ukraine, and Bosnia and Herzegovina) and the Visegrad countries (the Czech Republic, Hungary, Poland, and Slovakia) as implementers and funders of democracy assistance activities.

2. Framework of Reform

The draft reform of the EU external assistance instruments, linked to the Financial Perspective 2007-2013, was presented by the European Commission in September 2004. Originally, the Communication envisaged four instruments: three with a geographical scope, although containing thematic programmes - *Instrument of Pre-Accession Assistance (IPA)*, *European Neighbourhood and Partnership Instrument (ENPI)*, and *Development Co-operation and Economic Co-operation Instrument (DCECI)*; the fourth was the horizontal *Instrument for Stability* aimed at reacting to imminent crisis situations.

The programming of the geographical instruments should have been “comprehensive in order to incorporate all relevant policy objectives and ensure mainstreaming of cross-cutting issues, such as democracy and human rights...”⁴. Later on, the Commission identified seven thematic programmes, one of which should have focused on human rights and democracy promotion.

¹ Unlike in the USA

² The research excluded the sphere of technical assistance, which might also include elements of democracy promotion/democracy assistance, but is mainly implemented by government bodies or officials of third countries, as well as any other forms of general development aid that do not meet the definition quoted above.

³ (Raik 2006)

As a replacement for the *European Initiative for Democracy and Human Rights* (EIDHR I), a separate facility was proposed that would have been common to all four instruments, with a separate budget line (funds allocated from four budget allocations of the financial instruments) but without a specific legal basis⁵. Suggestions were made to narrow down EIDHR I and to limit the action of the draft thematic programme to countries where human rights and fundamental freedoms were particularly at risk. In countries where co-operation between civil society and government could be established, the support for civil society and non-state actors in terms of democracy assistance would have fallen under development co-operation and support to networking and civil society dialogue at national and regional level⁶.

The negotiations on the four instruments (IPA, ENPI, DCECI (later DCI), and the Instrument for Stability) continued, following the *co-decision procedure*. After adoption of the respective regulations, the negotiation and adoption of implementing measures (usually Strategy Papers)⁷ began in a so-called *Democratic Scrutiny Process*, arranging for a fast-track approval procedure between the Commission and the European Parliament (and the Council management committees)⁸.

However, the most challenging issue proved to be the clash over keeping a separate democracy and human rights instrument. Besides the EU institutions (European Commission, European Parliament, Council and the member states), civil society groups in Brussels and in the member states were involved in the debate on wider reform of the external action financial instruments, including also the reform of Financial Regulation and Implementing Rules. The Commission was quite open when drafting the proposals and invited several NGOs to consultations, from which an informal network of NGOs emerged, pushing for a separate democracy and human rights instrument (but differing substantially in their views on its objectives, implementation, and specific initiatives that emerged during this debate - such as the European Foundation for Democracy through Partnership, EFDP).

In the course of the debate, a crucial element was the strong partnership between civil society actors and the Democracy Caucus in the European Parliament, which was established by the members of the Foreign Affairs Committee (AFET)⁹. With the involvement of several

⁴ (European Commission 2004)

⁵ The External Affairs Commissioner Benita Ferrero-Waldner was not in favour of keeping a separate instrument for democracy and human rights support.

⁶ The draft Commission reform also contained support to the specific international instruments of human rights, justice and democracy, and retained embedded in the reform the funding of electoral observation missions (EOMs).

⁷ The competence to draft the implementing measures is conferred to the Commission by the Council (commitology). According to the Inter-institutional agreement, concluded in June 2006, the European Parliament received a power to control (and block) the implementing measures (when the co-decision procedure was in place when adopting the legislation); before the agreement, only the Council had the power to control the Commission when adopting the implementing measures. However, the agreement is quite fresh, so a standard procedure (how to exercise this new competence) has not been established yet in the European Parliament.

⁸ See below

⁹ The Democracy Caucus consisted of the MEPs of different political affiliations who were willing to pick up and promote the issue of democracy and human rights support embodied in the new independent instrument. The group was informally headed by British MEP Edward McMillan-Scott (EPP-ED), Vice-President of the European Parliament.

member states, the idea attained critical mass support, and the establishment of the new European Instrument for Democracy and Human Rights (EIDHR II) was agreed in June 2006.

The regulation was adopted in December 2006 and, consequently, the drafting and negotiating stages of the EIDHR II Strategy Paper 2007-2010 were launched. Overall, the very continuation of the independent democracy and human rights instrument was considered to be a significant achievement by civil society¹⁰.

The reform of the external assistance financial instruments aims at a more flexible approach in terms of delivery. However, any change takes place in given boundaries: Community assistance will always display a certain degree of rigidity in terms of programming cycle and budgeting, given by the nature of the EU and its internal procedures. Coherence of approaches and programming of the Community instruments and complementarities with the member states' and other donor institutions' programmes is thus very important. Not least in the context of the mid-term evaluation of the instruments and possible changes in the EU institutional structure (creation of the EU External Action Service or an EU High Representative for Foreign and Security Policy), further reform of the external assistance can be envisaged.

3. Amendment of Financial Regulation and Implementing Rules

The Financial Regulation (FR) applicable to the general budget of the European Communities was, together with the Implementing Rules (IR), criticised in several studies¹¹ commissioned by civil society as the source of Commission inflexibility in managing (democracy assistance) projects. The Regulation was amended and the changes went into effect as of 1 May 2007¹²; together with the regulation, the Implementing Rules were also modified. These rules apply generally to all EU external assistance financial instruments drawing on the Community budget lines - i.e. EIDHR, ENPI, IPA, DCI, and the Instrument for Stability (the European Development Fund is not financed from the Community budget).

Overall, several steps forward have been taken, and some of the obstacles to flexible project management, identified by civil society and NGOs working in challenging countries, were removed. As argued elsewhere¹³, the change of the regulations was crucial but a change in the

¹⁰ During the discussions on the reform of the financial instruments, consultations with civil society were conducted on several levels, however not on a regular basis; consultations were held in Brussels on the Regulations and Strategy Papers and within the EC Delegations on the programming itself. The European Commission follows the "not everyone can be consulted" policy, which means that the EC Delegations usually consult their "usual suspect" civil society partners with a project implementation track record or ask big international NGOs, active in the given country, for recommendations. Although the Commission's approach is understandable, in some cases it can narrow the access to the emerging or (to Commission) unknown grassroots NGOs or civil society organisations since the consultation invitations are usually dependent on personal contacts.

¹¹ The case studies from NGOs focused on different complaints (difficult procedures, reporting, application process, funds transfer, etc.) made by local NGOs, and mainly referred to EIDHR I spending. (F.M. Partners Limited 2005), (Soto 2005)

¹² (European Commission 2006a)

¹³ (F.M. Partners Limited 2005)

Commission's management culture should follow suit. The Commission has adopted several measures aiming at facilitating such a change so far: there was a poster campaign in the Commission buildings, pointing to the fact that the Financial Regulation had been amended; seminars for the officials, elaborating on the adopted amendments, have been conducted, although it has not been possible to find out what kind of message the officials are being given (most probably, the stress on the potentially competing priorities of "transparency" and "flexibility" is prevalent). Only the Commission's future practice will show if and how the management culture, namely in terms of flexibility, has improved.

Main issues:

- Current amendments provide for *funding for non-registered* organisations in duly justified cases¹⁴, provided that their representatives have the capacity to undertake legal obligations on their behalf and assume financial liability (FR/Art. 114b); however, it is unclear how precisely the representatives of such entities will prove they have such a capacity. The Financial Regulation amendments allow for certain exemptions from eligibility conditions in case of a non-registered organisation (FR/Art. 45): the authorizing officer can, for example, refrain from requiring the documents proving an applicant is not subject to a conflict of interest, has made false declarations or substantial errors, committed irregularities or fraud, or is subject to an administrative penalty, etc¹⁵. The particular demands and conditions placed upon an individual representing a non-registered organisation are not specified. It will be possible to assess the scope of the simplification and flexibility only when the first projects are implemented under the amended regulation and implementing rules.
- *Re-granting* is allowed for (within a grant contract), although the rules are quite restrictive; it is not possible to re-grant more than 50% of the grant, not more than € 10,000 per organisation, and not more than € 100,000 per total budget¹⁶, i.e. a maximum of ten re-granting contracts is allowed within one grant. The re-granting should be part of a bigger operational project (not exclusively re-granting)¹⁷.
- *Financial guarantees* provided by NGOs; there are some improvements in terms of required compulsory financial guarantees; the provisions allow large margins of discretion for Commission officials when asking for guarantees (depending on their risk assessment). For a grant, the requirement of 80% pre-financing is now limited to cases when the grant exceeds € 60,000 (IR/Art. 29); for grants of less or equal to €

¹⁴ An important achievement allowing for the funding of civil society organisations in countries such as Cuba or Belarus, where it is largely organisations conforming to the regime that are registered (or allowed to register).

¹⁵ See FR/Art. 93, 94, 96a

¹⁶ FR/Art. 120/2 "Where implementation of the action requires financial support to be given to third parties, the beneficiary of a Community grant may give such financial support provided that the following conditions are met: (a) the financial support is not the primary aim of the action; (b) the conditions for the giving of such support are strictly defined in the grant decision or agreement between the beneficiary and the Commission, with no margin for discretion; (c) the amounts concerned are small." The maximum amounts are defined in the Implementing Rules, Art. 184a.

¹⁷ (Ursu 2006)

10,000 (*IR/Art. 182*) the financial guarantee rule shall be applied only in duly substantiated cases. There is also a possibility of substituting payments in several instalments in place of financial guarantees (*IR/Art. 182*). A condition that a guarantee is required in return for the payment of pre-financing exceeding € 150,000 has been kept (*IR/Art. 152*). Although the possibility of waiving guarantees for NGOs has not been reached (it applies only for public bodies, international organisations and beneficiaries that have concluded a framework partnership), in many cases a guarantee requirement is subject to the assessment of the authorising officer. Still, most probably rather well-established NGOs with a track record of co-operation with EU Delegations and the Commission will enjoy the possibility of guarantee-waiving.

- For newly defined “grants of small amount” (less than or equal to € 25,000¹⁸), the documentation (administrative) burden diminishes significantly (*FR/Art. 93*).
- For beneficiary organisations, the grant threshold for which an external audit is required has been increased from € 300,000 to € 500,000 for grants related to specific projects, and from € 75,000 to € 100,000 for grants to finance the operational costs of the organisations.
- *Financial liability of officials*: The Financial Regulation and Implementing Rules clarify the personal financial liability provisions (If the authorising officer acts intentionally, he/she shall be liable for the entire loss suffered. In cases of gross negligence, it is limited to one year’s salary, *FR/Art. 66*¹⁹. This rule applies to all financial actors and any other persons involved in Community budget implementation), and thus psychologically should allow for more flexibility on the desk officers’ side. However, in the previous budgeting period under the 2002 Financial Regulation, the problem was not so much the lack of clarity of the regulation itself but the Commission administration and management culture and mentality, which applies too much pressure on the desk officers (also in terms of administrative burden). Furthermore, the financial liability of an official is part of the Staff Regulation, so the extent of liability is not resolved exclusively by the Financial Regulation. Owing to this uncertainty, the atmosphere of full liability could persist. Pushing for looser regulation on this point from the NGOs’ side is understandable but at the same time it is important to note that there are cases of mismanagement and that the Commission follows a certain logic (and is also often challenged by the member states on the budget management issues)²⁰. Transparency and anti-fraud control

¹⁸ Where a single beneficiary is awarded several grants in a financial year, the threshold of € 25,000 applies to the total of those grants.

¹⁹ *FR/Art. 66, 1 c*: “In keeping with the principle of proportionality, the level of liability of the authorising officer shall be assessed primarily on the basis of the degree of his serious misconduct. If the authorising officer acts intentionally he shall be liable for the entire loss suffered. If the authorising officer has committed gross negligence, the liability shall be limited to a maximum of 12 months’ basic salary.” Article 66 of the Financial Regulation clarifies further other ways, which can result in holding the official liable for any damage.

²⁰ In the context of the FR/IR amendments negotiation, at the time of the hearing where FR/IR amendments were discussed in the European Parliament in January 2007, a discussion of the Budget Committee on budget control, elaborating on a case of apparently vast financial mismanagement of an NGO, took place simultaneously. The

measures have to be retained, but it remains to be seen whether the right balance has been struck between flexibility and transparency.

- A trend towards reinforcement of transparency (reporting and full public disclosure of the projects and fund recipients) *versus* the safety of the beneficiaries, namely in countries where the beneficiaries are most at risk (namely non-registered NGOs and natural persons in countries such as Cuba and Belarus). Since the former Commission policy did not allow for non-registered organisations to apply for grants (or for re-granting), the EC money was not involved in operations of this kind and thus public disclosure had not been widely discussed. Although the amended FR/IR display a trend towards reinforced transparency²¹, the amended Article 53 of the Financial Regulation states: “ensure, with due observance of the requirements of confidentiality and security, adequate annual ex post publication of beneficiaries of funds deriving from the budget”. This provision is intended to be sufficient to guarantee that all actors (Commission, member states, and international organisations), involved in the “specific” distribution of the Community funding, can keep the information on the beneficiary confidential. In the EIDHR II regulation itself, there is no provision in terms of confidentiality of data due to safety reasons, but Article 28 of the EIDHR Strategy paper 2007-2010 (“Where specially justified, the usual practice of publishing information about EU-sponsored activities may be modified”) gives the European Commission an instrument to protect some of the beneficiaries in the countries where their lives could be at risk. Even if there is no established practice, it might be assumed that given the nature of the cases a strict confidentiality policy will be followed since the actions would otherwise be counterproductive.
- The exception from a rule that grants may not produce a profit for the beneficiary applies also for actions aimed at the reinforcement of the financial capacity of a beneficiary or at the generation of income in the framework of external actions (FR/Art. 109). It is possible for a natural person to receive funding through re-granting (or through an EIDHR II ad hoc measure), which might in fact serve as a financial support for living expenses.

Although the principle “rules first, quality second” is generally perceived as an informal guideline for Commission staff, there are signs that the current atmosphere in the Commission points to a potentially changing milieu. Generally, the current FR/IR amendments provide for more flexibility, and a larger portion of discretion is assigned to the authorising individuals.

EP Budget Committee was discussing how to enforce the liability of the Commission staff in this particular case and asked the Commission to toughen the rules; this case made the calls for further flexibility of officials more difficult to argue.

²¹ *FR/Art. 1*: “Council Regulation (EC, EURATOM) No. 1605/20024, hereinafter “the Financial Regulation”, lays down the legal foundations of the financial management reform. As such, its essential elements should be maintained and strengthened. *Transparency, in particular, has to be reinforced by providing for information on beneficiaries of Community funds...*”

The Financial Regulation and Implementing Rules are general principles that should be followed when dealing with Community budget lines. All specificities cannot be reflected fully in these general purposes serving as legal bases²².

On the other hand, there are several issues connected to general project management that have not been tackled in the amendments, like the very principle of calls for proposal ("guided by impartiality and competitiveness") when an offer/proposal can be only accepted or rejected and no further communication with the applicant officially takes place, or another issue of easing the possibility to make changes once the project is approved while keeping its objectives²³; NGOs also complain about insufficient dissemination of call for proposals in target countries, resulting in a lack of awareness by local civil society actors of the EU assistance projects.

4. Community Financial Instruments 2007-2013

A. Horizontal instruments with specific legal basis

(i) European Instrument for Democracy and Human Rights (EIDHR II)

Background

The European Parliament conceived the European Initiative for Democracy and Human Rights (EIDHR I) in 1994 by suggesting the re-grouping of nine budget lines under Chapter 19.04 in order to promote the rule of law and human rights worldwide, together with the recognition of civil society as key actors in the process and accordingly making NGOs eligible as applicants for funding within this scheme. The Initiative was intended to boost the capacity of NGOs and to provide democracy assistance through NGOs. Based on two regulations, its key strength was the possibility to operate without the need for the consent of the host government. A programme with not only development goals but with policy and political reach was established²⁴.

Together with the preparations for the new Financial Perspective 2007-2013, the reform of the external assistance instruments was launched. In June 2006, the establishment of the separate financial instrument was agreed²⁵, and the EIDHR II²⁶ regulation was approved in December

²² For example, the issue of listing NGOs closed down by their governments for political reasons in order to allow them to bid for EU funding as an exception.

²³ The desk officer can propose changes but the number of signatures that must approve these suggestions is still "frustrating".

²⁴ In 2005-2006, EIDHR I covered projects in 68 countries (not all EIDHR I priorities were implemented in all countries, and the same principle applies for EIDHR II); in 54 of them, the micro-project facility was introduced.

²⁵ Further details (political foundations, idea of budget allocation for European Foundation for Democracy through Partnership, EFDP) on the negotiations can be found below.

2006²⁷. The key features of the instrument, including the principle of operating without the need of host government consent, were retained and enhanced²⁸.

The deliberations on the EIDHR II Strategy Paper 2007-2010 followed. The Commission Directorate-General for External Relations (DG RELEX) drafted the document, suggesting originally six objectives for the given period, including EU election observation missions (EOMs)²⁹. The respective management committee was established, and consultations with Brussels NGOs took place (civil society groups in the member states usually tried to influence the government position in the management committee). Since the decision on the separate instrument was taken only in June 2006 and the Regulation adopted only in December 2006³⁰, the preparations of the Strategy Paper were delayed in DG RELEX, where staff turnover and other practical issues contributed to the hold-up. Within the management committee, the most active member states were France, UK, Finland, Sweden, the Netherlands, Denmark, the Czech Republic, Lithuania and Germany (then holding the Presidency)³¹.

Overall, the Regulation and Strategy Paper negotiations showed the differing attitudes of the European Commission and civil society (NGOs in Brussels) towards the “philosophy” of democracy assistance. The Commission’s standpoint distinguishes between human rights financing and democracy assistance (understood rather as “democracy promotion”) financing, within which specific democracy-related objectives need to be financed, i.e. EOMs and actions strengthening the capacity of regional organisations.

The NGOs, on the other hand, have been pushing for the removal of EOMs from EIDHR II and for the instrument to focus rather on strengthening the capacity of civil society and delivering democracy assistance through civil society organisations. Furthermore, within the Commission the notion prevails that a country cannot be changed when its politicians are not involved, and thus the measures targeting civil society or implemented through civil society are perceived rather as a complementary element within the overall strategy of democracy promotion in a third country.

The Strategy Paper was also discussed with civil society groups. The list of civil society actors through which the EIDHR II would operate (including non-registered organisations and

²⁶ Regulation (EC) No. 1889/2006

²⁷ In the EU Council, the EIDHR II Regulation and definition of the broad guidelines were discussed in the geographical Council Working Groups like CODEV, COEAST, or COLAT (Cuba). The Working group on human rights (COHOM) cannot overrule the other working groups since there is formally no hierarchy among them. The policies according to which human rights are mainstreamed in the EU depend on Council Presidencies; in this sense, the Finnish and Austrian were the most active recent Presidencies. Allegedly, the situation in Belarus was the main argument in the Council for prolonging the EIDHR as a separate instrument.

²⁸ The wording is such that host government’s and *other public authorities*’ consent is not necessarily required for implementing the actions under EIDHR II, or that the possibility to support non-registered organisations is included.

²⁹ Out of the five objectives finally agreed, the first four display democracy promotion as the main focus, and the fifth objective covers EOMs. See the details below.

³⁰ During the deliberation on the EIDHR II regulation, including the discussions by the management committee on the Strategy paper, the political interests of the member states had to be accommodated.

³¹ The Czech Republic and Lithuania were, for example, emphasising the issue of spending the funds allocated for 2007 in 2008 and the idea of democracy assistance co-ordination with other donors.

political parties - only possible as part of a multiparty proposal) was already agreed when negotiating the regulation; the European Commission wanted then to establish a list of possible recipient organisations but the idea was abandoned due to the potential rigidity of such a list and the boosting of an effect known as “donor’s darlings”.

Generally³², civil society lobbied for an annual increase of the EIDHR II budget and the possibility to re-allocate the EIDHR II overheads according to the demand, for enhanced support for human rights defenders (part of Objective 3), and more specifically for the option to channel financial support (ad hoc measures) through EU-based NGOs that know the situation on the ground and have the means to deliver funding; and for local civil society actors active in election-monitoring in third countries to be eligible for funding under Objective 5 (EOMs)³³.

In some respects, the civil society priorities have been accommodated; for example, in the case of human rights defenders, the possibility to channel ad hoc measures through NGOs is now explicitly stated in Article 54 of the Strategy Paper. Moreover, the eligibility of local civil society actors involved in election observations was one of the last-minute changes made to the Strategy Paper 2007-2010 (Article 65)³⁴. Although the principle of an annual increase in the EIDHR II budget was adopted at the end, civil society lost the battle over the EOMs allocations, which will consume a large share (on average 25%) of its annual budgets³⁵, and were disappointed also over the flexibility in dealing with budget overheads.

Regulatory framework and legal basis

- **EIDHR I - Council regulations (EC) No 975/1999 and No 976/1999³⁶**

³² A unified civil society standpoint was hard to achieve within the informal network since there were many divisive issues (such as the geographical focus) where some NGOs were not able to reach a consensus even among themselves. Some NGOs lobbied solely for adjustments to priorities and objectives, others for budget allocations. The *Human rights and democracy network* established an EIDHR working group and tried to negotiate joint positions. The working group included organisations such as Amnesty International or Human Rights Watch, as well as conflict-prevention and child-protection organisations - basically anyone could join and lobby for their own issues. The working group managed to come up with very general recommendations, and each organisation subsequently lobbied for its priority issues on its own.

³³ The general interest of the (otherwise rather fragmented) civil society groups in Brussels was to lobby against the inclusion of the EOMs in EIDHR II; it was proposed that the funding for the election missions should come from other country allocations (such as ENPI) where a third-country government consent is assured and a prerequisite of any Community-funded action (the EU does not send electoral missions without government consent anyway, so including EOMs under EIDHR is somehow not in line with its logic). When the battle was lost and the EOMs were kept under the EIDHR roof, the lobbying focused on a decrease in the EOMs' allocations (Objective 5).

³⁴ Under EIDHR II, it will thus be possible to finance the activities of, and contribute more directly to the capacity-building of, local civil society actors, as these organisations know better the milieu and the ways whereby election results can be distorted than an international organisation such as the Organization for Security and Co-operation in Europe (OSCE), argued civil society groups during the negotiations.

³⁵ For details on the EIDHR budgets, see below.

³⁶ Within EIDHR I, in 2006, four campaigns were carried out (not all countries eligible for all four campaigns): Promoting justice and rule of law; Fostering a culture of human rights; Promoting the democratic process; Advancing equality, tolerance and peace. The EIDHR envisaged the following tools for implementation - Macro-projects: EC contribution € 300,000 - € 1 million, calls for proposals, managed from Brussels; Micro-

- **EIDHR II** - Regulation (EC) No. 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide, Official Journal of the European Union, L 386 (valid until 31 December 2013)

EIDHR II Implementing documents and measures

- *Strategy Paper 2007-2010*³⁷; subject to the mid-term revision, specifies the objectives pursued, the fields of intervention, the expected results, the management procedures and the total amount of financing planned. It contains a description of the operations to be financed, an indication of the amounts allocated for each operation, an indicative implementation timetable and geographical divisions. Objectives will be measurable and have time-bound benchmarks³⁸. DG RELEX (namely its Human Rights Unit) is responsible for the policy formulation and co-ordination with other DGs (DG AIDCO - EuropeAid - and the involvement of geography-oriented Units of DG RELEX) and member states (in the management committee), and suggests the budget allocations. EuropeAid overviews the process.
- *Annual (Action) Programmes*; drafted and managed by EuropeAid, negotiated within a management committee, contain more operational guidelines (implementing mechanisms), the number of calls for proposals for each objective, priorities and eligibility guidelines. The first calls for proposals under EIDHR II were launched in October-November 2007, and the undrawn allocations re-scheduled for 2008. The list of countries “at risk” is agreed every year³⁹, proposed by EuropeAid. The Annual programme also specifies the target countries in which non-registered NGOs will be eligible for funding.
- *Calls for proposals: macro-projects*: namely Objective 1 of EIDHR II, central calls for proposals (Brussels), general guidelines of what results should be delivered, *micro-projects*: namely Objective 2 of EIDHR II (within Country-Based Support Schemes, CBSS) implemented by the EC Delegations.
- *Grants awarded without calls for proposals: Special measures* - in case of an event of unforeseen and duly justified needs or exceptional circumstances, the Commission may adopt special measures not covered in the Strategy Paper⁴⁰. *Ad hoc measures* - the

projects: Community grants of maximum € 100,000, managed by EC delegations; Targeted projects: specific objectives which could not be pursued through calls for proposals or micro-projects, usually implemented in co-operation with international organisations or regional organisations.

³⁷ Adopted on 8 August 2007.

³⁸ Although indicators and benchmarks are not set for all objectives, for example Objective 3, part on human rights defenders where the indicators and benchmarks are missing.

³⁹ The way this list is composed remains one of the questions concerning EIDHR II implementation, see *Summary*.

⁴⁰ Where the cost of such measures is equal to or exceeds € 3 million, the Commission can adopt them in accordance with the procedure laid down in EIDHR II Regulation (Art. 17). For Special Measures costing less than € 3m, the Commission must inform the European Parliament and the member states within ten working days of adopting its decision.

Commission may allocate small grants on an ad hoc basis to human rights defenders responding to urgent protection needs⁴¹. Ad hoc measures are not subject to calls for proposals.

- *EOMs funding*

EIDHR system and rules evolution

It is generally agreed that the main problem surrounding the European Initiative for Democracy and Human Rights (EIDHR I) was the incapacity of the European Commission to manage, fund and co-ordinate projects in a fast and flexible way - in particular, the centralised calls for proposals with long project-evaluation periods were strongly criticised. The number of rules to be followed by EC officials made the whole system too slow and ineffective. The Financial Regulation and Implementing Rules, established in order to avoid mismanagement of EU resources, did not allow the Commission to work effectively.

NGOs and other civil society actors managing projects in countries where the conditions had (and might have) been changing rapidly needed funding fast, but the procedures took normally about two to three years⁴². These organisations, working at national or local level, criticised both the speed of the grant-awarding system and the strict financial control, which did not allow for certain types of operations. The EC financial control was perceived to be much stricter than normal controls in the public and private sector, and the obligation of delivering regular reports was considered a major burden, overloading the capacity of the NGOs.

According to the civil society criticism, EIDHR I failed to have real impact, supporting largely ad hoc initiatives, not applying resources strategically and often losing momentum to support locally driven processes of change. Criticism also focused on the lack of intra-EU co-ordination (i.e. between various instruments and the respective actions) and of intra-EU impact assessment and project evaluation, and of co-ordination with other donors. Another point of criticism was that the resources had been spread too thinly due to the expanding list of beneficiary countries and thematic priorities. Furthermore, the complexity of the application process and reporting requirements needed an almost expert knowledge of EC systems and, as a result, European NGOs and Brussels-based local “donor darlings” had been the main beneficiaries.

The amendments of the Financial Regulation and Implementing Rules, and the resulting opportunities and pitfalls in terms of EC flexibility and effectiveness, are tackled elsewhere. The EIDHR II Regulation and Strategy Paper 2007-2010 introduced the following improvements:

⁴¹ The European Parliament and the member states must be *informed* of the ad hoc measures carried out.

⁴² (Raik 2006)

- *Making the system faster and more flexible*; the Commission has the possibility to adopt *Special* and *Ad hoc* measures in case of urgent need⁴³ (without calls for proposals): 4.3% of the budget of EIDHR II is reserved for these measures, in comparison with 4% within the period 2002-2006⁴⁴. The EIDHR II Regulation also enlarges the number of persons or bodies eligible for funding - “entities that do not have legal personality under the applicable national law” (Art. 19) and “groups of natural persons without a legal personality and civil society organisations” (Art. 41 of the Strategy Paper) are eligible⁴⁵. New kinds of “out of country” operations are introduced (Art. 27 of the Strategy Paper), allowing NGOs to work not only in a country concerned by the project, but also “in neighbouring countries, with the diaspora or refugee committee”. Finally, a few derogations from rules of origin concerning the purchase and use of supplies and materials were introduced⁴⁶.
- *Enhancing co-ordination*; EIDHR II continues to be a complementary instrument of EU democracy assistance worldwide (including IPA, ENPI, DCI, etc.), used in synergy with other EC actions. In order to improve the effectiveness of the whole system of EU external aid, it is necessary to ensure good co-ordination of all the instruments concerned. As mentioned in the Strategy Paper 2007-2010 (Annex III, point 8), “efforts to explore complementarity with other EC actions” have to be increased. The Commission declares that it sees the legislation covering external spending in 2007-2010 as a “package”, and the package approach is the only sure way to guarantee the consistency and coherence of the instruments. The wording of the EIDHR II Strategy Paper 2007-2010 also puts emphasis on the necessity of “more systematic monitoring” by the EC of the projects; how this will translate into impact assessment and project evaluation is rather unclear. Furthermore, it is important that the EC and also the member states co-ordinate better their work with other donors, providing support to various entities fighting for human rights and democracy. The EIDHR II Regulation (Art. 15) states the following: “The Commission and member states should seek closer co-ordination with other donors.” Generally, the emphasis is put on a greater need for co-ordination of aid and support between the EC, member states and other bodies - this includes “regular consultations and frequent exchanges of relevant information”⁴⁷ and an “increased dialogue with implementing partners and increased sharing of lessons learned between delegations and with headquarters”⁴⁸. How this wording will translate into systematic co-ordination between the EU

⁴³ Art. 7 and 9 of Regulation no. 1889/2006

⁴⁴ Targeted projects, which might have been implemented without calls for proposals under EIDHR I. The EIDHR allows for using the new measures for civil society actors support (human rights defenders) explicitly; meanwhile the targeted projects were rather implemented by international organisations or regional organisations (i.e. grants of big amounts)

⁴⁵ In addition, Article 28 of the Strategy Paper 2007-2010 gives to the EC an instrument to protect some of the beneficiaries of the EIDHR II and their families in countries where their life could be at risk (“Where specially justified, the usual practice of publishing information about EU-sponsored activities may be modified”).

⁴⁶ Art. 14 of the Regulation no. 1889/2006

⁴⁷ Art. 3, Point 3 of the Regulation no.1889/2006; in this sense, for example, the very co-ordination of calls for proposals between the EC and member states’ schemes is important due to the co-financing requirements (especially for macro-projects).

⁴⁸ Strategy Paper 2007-2010, Annex III, point 8

institutions (and also within the Commission Units) of actions, impact assessments and evaluations, and better co-ordination with other donors, is not specified.

- *Transfer of competences to EC Delegations (and to independent foundation/agency):* critics generally agree that the centralised EC management of EIDHR is not flexible enough to be effective. The discussion on delegating powers and resources, either by reinforcing EC Delegations or by establishing an independent foundation or agency to manage at least a part of EIDHR II projects, was under way⁴⁹. The idea of the European Foundation for Democracy through Partnership (EFDP) was discussed but in the end it was decided that no direct EIDHR II funding would be allocated to the foundation budget (EFDP can apply for EIDHR II money through calls for proposals). A solution of reinforcing EC Delegations in third countries will probably prevail. The amount of funding managed by EC Delegations has been constantly increasing over the past five years; in 2002, EC Delegations were managing 8% of funding used through the *calls for proposals*, and in 2004 it amounted to 14%, reaching a 25% share in 2006. Even if the corresponding data are not yet available for the EIDHR II, this trend is likely to continue. However, delegating a larger part of EIDHR II management to EC Delegations without reinforcing their capacities could bring additional administrative burden to the staff and in the end make the EC Delegations less effective and unable to implement their tasks and deliver results. That is why the Strategy Paper 2007-2010 (Annex III, point 4) states that “Delegations need to be equipped for the task, politically as well as logistically”.

Evolution of the EIDHR Objectives

Except for the minor changes mentioned below, the objectives of EIDHR II are mostly in line with those of the EIDHR I. The progress is more in the way they are formulated and arranged into groups than in the objectives themselves. According to the Strategy Paper 2007-2010, key EIDHR II objectives are:

- Objective 1) Enhancing respect for human rights and fundamental freedoms in countries and regions where they are most at risk: on average, 10.1% of the EIDHR II 2007-2010 budget is dedicated to this objective.
- Objective 2) Strengthening the role of civil society in promoting human rights and democratic reform, in supporting conflict prevention and in consolidating political participation and representation: on average, 37.6% of the EIDHR II 2007-2010 budget is dedicated to this objective.
- Objective 3) Supporting actions on human rights and democracy issues in areas covered by EU Guidelines, including on human rights dialogues, on human rights defenders, on the death penalty, on torture, and on children and armed conflict; on average, 14.1% of the EIDHR II 2007-2010 budget is dedicated to this objective.

⁴⁹ See the details below in the section on EFDP

Objective 4) Supporting and strengthening the international and regional framework for the protection of human rights, justice, the rule of law, and the promotion of democracy; on average, 10.5 % of the EIDHR II 2007-2010 budget is dedicated to this objective.

Objective 5) Building confidence in and enhancing the reliability and transparency of democratic electoral processes, in particular through election observation; on average, 23.7% of the EIDHR II 2007-2010 budget is dedicated to this objective⁵⁰.

Within these five points, most of the EIDHR I objectives can be identified. However, there is a difference between EIDHR I and EIDHR II in terms of prioritisation - some of the objectives mentioned above have greater importance than before; others are not followed as intensively as under EIDHR I. EIDHR II puts more emphasis on civil society as the basic element of the Instrument's implementation. Even if civil society was considered the most important element of the democratisation effort since the introduction of the EIDHR I, this fact is now expressed more explicitly; the notion that civil society is not only the ultimate beneficiary of EIDHR II projects, but also an active actor in the democratisation process and human rights promotion in the third countries, is enhanced - EIDHR II puts more stress on the "active role" that civil society has to play in these processes⁵¹. Although EIDHR I prioritised co-ordination with civil society, EIDHR II pays even more attention to that point. Civil society is the base for the EIDHR II response strategy: "Work with, for, and through civil society organisations will give the response strategy its critical profile."⁵²

One of the main trends of EIDHR I that needs to be maintained and reinforced (it has greater priority than before) is the pursuit of a concise thematic approach within grant-awarding and funding. As explained in the Strategy Paper 2007-2010 (Annex III, point 2), this dimension of EIDHR II has to be supported more than before: "In order to enhance impact and achieve greater strategic focus, there have been attempts to integrate themes in a limited number of campaigns as for 2005-2006 programming. This process needs to go further. In order to streamline and reduce fragmentation, the general balance of opinion has been to *maintain a broad geographic focus, whilst tightening and integrating further the thematic approach.*" The number of countries eligible for EIDHR is constantly growing⁵³ and so, according to the Commission, the thematic approach is an even greater necessity to ensure effective work and results delivery.

⁵⁰ The remainder of the budget represents the allocations for the contingency fund.

⁵¹ Regulation no.1889/2006 mentions several times the importance of "strengthening civil society activity" (Art. 1, point 2.a) and "reinforcing an active role for civil society within" (Art. 1, point 2.b), "mainly through support for civil society organisations" (Art. 1, point 2.a or point 1.a and the whole article 2, point 1.c.ii). Also, according to the Strategy Paper 2007-2010, civil society "has clear priority" (Art. 6), and "has to be supported" (Art. 11)

⁵² Art. 17 of the Strategy Paper 2007-2010: the funding of non-registered organisations and natural persons shows that declarations of the importance of civil society are taken seriously.

⁵³ See details below

As for other changes, the introduction of the EU Guidelines on Human Rights (the Strategy Paper 2007-2010 mentions explicitly the EU Guidelines on Human Rights as a part of the EIDHR II, Objective 3), stronger support for human rights defenders (the budget line for supporting human rights defenders worldwide amounts to only € 4 million per year and it is questionable whether this amount is sufficient), and more emphasis on the rights of women and children should be mentioned⁵⁴. Gender equality and the fight against all forms of discrimination are underlined⁵⁵, together with the “promotion of core labour standards and corporate social responsibility”⁵⁶.

A number of objectives maintained the same level of importance, i.e. promoting justice, supporting the International Criminal Court and other criminal tribunals, promoting accountability and the fight against corruption, torture and the death penalty. The independence of action from the consent of third-country governments *and other public authorities*, fundamental to EC action in countries such as Belarus or Cuba, was also kept. Further conclusions on the evolution of the thematic priorities of the EIDHR can be made on the basis of the EIDHR II budget.

Evolution of the EIDHR budget

Within the period of 2002-2010, the EIDHR budget is scheduled to increase from about € 100 million in 2002 to € 145.8 million in 2010.

EIDHR financial allocations 2002 - 2010 (€)					
Year	2002	2003	2004	2005	2006
Total budget	100,459,322	100,746,534	124,957,135	128,470,130	122,437,792
Year	2007	2008	2009	2010	2002 - 2010
Total budget	130,000,000	137,000,000	141,600,000	145,800,000	1,131,670,917

Geographical reach

Concerning the evolution of the EIDHR budget, the number of “focus countries” (micro-projects) had been continually increasing during the previous period from initially 29 countries in 2002 to 68 countries in 2006. The range of countries eligible for EIDHR II funding could increase even further in the course of 2007-2013, although for the period 2007-

⁵⁴ The EU Guidelines on human rights defenders were introduced in 2004. Regulation no.1889/2006 affirms that “EC assistance shall aim in particular at...providing support and solidarity to human rights defenders” (Art. 1, point 2.a, same for Art. 2, point 1.b.ii).

⁵⁵ Comparison with Regulations no. 975/1999 and 976/1999 on the development and consolidation of democracy and the rule of law and respect for human rights and fundamental freedoms, basic documents for EIDHR I. These issues are mentioned several times in both Regulation no. 1889/2006 (Art. 2, point 1.a.vi and point 1.b.v concerning gender equality and women rights; Art. 2, point 1.b.iii concerning the fight against all forms of racism, xenophobia and discrimination; Art. 2, point 1.b.vi concerning the rights of children and in 2007-2010 Strategy Paper (Art. 22).

⁵⁶ Regulation no. 1889/2006 (Art. 2, point 1.b.viii)

2010 it is envisaged that 64 countries will be targeted for funding under the Country-Based Support Scheme (CBSS).

Any substantive “widening” trend could endanger the effectiveness of EIDHR II, providing each third country with a decreasing amount of resources, as the budget itself is not supposed to grow rapidly under the next financial period (it increased by 22% within the period 2002-2006, while the range of countries concerned has increased by about 135% since 2002). In order to maintain the effectiveness of the whole system, the 2007-2010 Strategy Paper proposes “tightening and integrating further the thematic approach” (Annex III, point 2). The Commission sees this as a way to “enhance impact and achieve greater strategic focus [of the EIDHR]”. Moreover, not all focus countries are eligible for funding every year and, when eligible, most often not under all five Objectives (and priorities).

The issue of the criteria for selection of the eligible countries is also important. In the Strategy Paper 2007-2010, the following identification criteria are set: 1) *Country has a relatively open society allowing for the development and activities of civil society organisations (including human rights and democracy advocacy bodies), but where the latter may be without much organisational capacity, influence and cohesion;* 2) *Well-founded need for more effective action by civil society organisations in the fields of human rights and democratisation for civil society becoming a substantial force for positive change and reform;* 3) *Specific priority established on the basis of EU policy considerations.* The EIDHR II target countries are selected every year, the list is drafted by DG RELEX and DG AIDCO (EuropeAid) and approved by the member states in the Council where political influences naturally play a role.

The NGOs themselves were not able to arrive at agreed criteria as to how the countries should be selected. It was assumed that EIDHR II should be accessible globally and that project funding should be made available solely on a competitive basis, but the Commission continued with the regional division of funding (at least for Objectives 1 and 2). Some NGOs, for instance the International Federation of Human Rights Organisations (FIDH), came up with their own criteria as to how the countries should be selected, specifically when it comes to countries with a hostile environment, and they tabled these criteria to the Commission. The overall notion is that an ambition to cover everyone and everything would be counterproductive; otherwise it is rather a difficult topic for agreement to be reached among the civil society organisations that were consulted.

Evolution of financial allocations by type of procedure

Concerning the types of procedure under EIDHR I (which is only moderately modified under EIDHR II), it is possible to compare the evolution of financial allocations spent through *Calls for proposals* (managed either by the EC in Brussels or by local EC Delegations - both macro-projects and micro-projects), *Grants awarded without calls for proposals* (including Specific and Ad hoc measures under EIDHR II) and *EOMs*.

As for the *Calls for proposals*, the part of the budget spent on these measures remained almost the same throughout the 2002-2006 period; except for 2004 (when 74% of the budget was spent on *Calls for proposals*), about 60% of the total EIDHR budget was reserved for

Calls for proposals (59% of the budget in 2002, 59% in 2003, 58% in 2005, and 61% in 2006). An increasingly large part of this funding is managed by the EC Delegations at local level, and the importance of EC Delegations in managing EIDHR funding has been increasing since 2002. In 2002, only 8% of the total EIDHR budget was managed by EC Delegations (and 51% by the EC in Brussels). Within the period 2003-2004, the Delegations' portion reached 14% of the total budget, and amounted to 28% and 25% of the EIDHR I budget in 2005 and 2006 respectively.

EC Delegations have become a key player in managing EIDHR funds, being deemed more flexible in awarding grants and funding, and better informed about the situation on the ground. This trend of delegating competences from central to local level is likely to continue as increased flexibility in managing and funding projects is a major priority of EIDHR II. The portion of funding allocated for EC Delegations is subject to the DG AIDCO-EC Delegations' annual dialogue on budgeting, when the EC Delegations are invited to estimate the amount they can award through the calls for proposals in a given country.

As for *Grants awarded without calls for proposals*, the portion of the budget spent on these measures remained largely unchanged until 2006, when the amount of resources allocated through these grants decreased from an average of 20% (21% in 2002, 19% in 2003, 18% in 2004, and 20% in 2005) to only 11%. This change was caused by an increase of funding spent on *EOMs* - the budget allocation on *EOMs* had been growing from an initial 15% in 2002 and 2003 to 21% in 2005 and 25% in 2006. Even if the maximum share of the EIDHR II budget spent on *EOMs* has been set at 25%⁵⁷, the amount of money spent on this objective is likely to stay near 25% as the EC (and the member states) still gives a high priority to election observation. If almost 5% of the budget is reserved each year for the contingency fund (overheads), there will probably be no more than about 12% of the budget remaining for *Grants awarded without calls for proposals* under the next financial period.

Evolution of financial allocations for micro projects - regional breakdown

A comparison of financial allocations for micro-projects by geographic regions follows in order to describe the evolution of the geographical priorities of EIDHR I from 2002-2006. As micro-projects are a key element of EIDHR, a comparison based on financial allocations for micro-projects seems relevant for such an analysis. For EIDHR II, only the indicative regional shares (in percentage) are known at the moment, not specifying micro-projects allocations but assuming that the micro-projects will fall under Objective 2, the Country-Based Support Schemes (CBSS); however, not all CBSS allocations will be dedicated to micro-projects, so a direct comparison with EIDHR I is not possible. The geographical breakdown of the budget lines will apply only to Objective 1 and Objective 2, since the remaining three objectives are

⁵⁷ This commitment is mentioned in the Strategy Paper 2007-2010 (Art. 63); however, 25% represents a large portion of the EIDHR II budget envelope.

global, with a specification of the geographical focus of each priority in the Strategy Paper 2007-2010⁵⁸.

- *Western Balkans and the Candidate countries:* The part of the EIDHR I budget spent on micro-projects in this region (Albania, Bosnia and Herzegovina, Macedonia (FYROM), (then) Serbia and Montenegro, and Turkey) decreased over the years - from 20.4% in 2002 to 7.3% in 2006. The steady decrease of EIDHR I funding is explained by the deployment of other EU instruments (and EU pre-accession assistance) in this region. Within EIDHR II (2007-2010), Western Balkans and Candidate countries are eligible under Objective 2 for 25% of the CBSS allocation, amounting to € 7.5 million in 2007, € 9.25m, € 11.15m and € 12.45m respectively in 2008, 2009 and 2010. The group of eligible countries was enlarged to include Croatia for 2007, as well as Albania, Bosnia and Herzegovina, Montenegro, Serbia (including Kosovo), Turkey, and FYROM.
- *Eastern Europe and Southern Caucasus:* The amount of EIDHR I funding reserved for this region (Armenia, Belarus, Georgia, Ukraine, Russia) did not change in a significant way over the period 2002-2006, reaching usually about 15% of the micro-projects funding. For EIDHR II, the region was re-defined as *European Neighbourhood Policy and East of Jordan countries*, enlarging the original Eastern Europe and Southern Caucasus group to include Moldova and Azerbaijan, and adding the EIDHR I *Mediterranean and Middle East* region, excluding Tunisia and Syria for the time being, and including Yemen. Not all countries in the group were eligible for CBSS already in 2007; the total CBSS amount for the enlarged region is €10 million in 2007, € 12.3m, € 14.7m and € 16.6m respectively in 2008, 2009 and 2010. The countries concerned are to a large extent eligible for funds under the new ENPI.
- *Mediterranean and Middle East:* Most of the countries of this region were not eligible for EIDHR I funding until the year 2004; in 2002-2003, only about 10% of the EIDHR I micro-project funding was spent there (Algeria, Gaza/West Bank, Israel, Tunisia). Since 2004, the region has been given greater priority, and about 20% of the EIDHR I micro-project budget was spent there (significantly, Morocco and Egypt have been the biggest beneficiaries since 2004). Under EIDHR II, the region is unified within one heading with Eastern Europe and Southern Caucasus (see above).
- *Asia and Central Asia:* As for Asian countries, the trend of a geographic widening and its consequences can be observed. The part of the EIDHR I budget spent in this region on micro-projects, i.e. about 15% of the total budget, remained relatively stable over the whole period; minor changes in both directions are observable (17% in 2002, 18.5% in 2003, 13.3% in 2004, 16.7% in 2005, and 13% in 2006). With the widening range of “focus countries” (from initially two countries in 2002 to nine countries in 2006) and the relatively stable budget, the amount of funding spent in each country

⁵⁸ For example, the priority *strengthening the civil society involvement in human rights dialogue* will focus on countries engaged in human rights dialogue with the EU (Objective 3, Art. 53 of the Strategy Paper 2007-2010).

decreased instead of regularly increasing (this is the case in all countries concerned). Concerning Central Asia, this region played an increasingly important role in the EIDHR geographical focus (one reason for this tendency is that it was not covered by any other EU democracy promotion instruments). EIDHR funding increased from 5.12% in 2004 (the first time Kazakhstan, Kyrgyzstan and Tajikistan were eligible for EIDHR) to 7.1% in 2006. The trend of reinforcing EIDHR II funding for Central Asia is likely to continue. A total of 13 countries of Asia and Central Asia⁵⁹ are eligible for the total CBSS funds of € 4.5 million in 2007, € 5.6m, € 6.7m and € 7.5m respectively in 2008, 2009 and 2010.

- *Sub-Saharan Africa, Caribbean and Pacific countries (ACP)*: Since 2003, when most of the countries concerned became eligible for EIDHR I funding, there has been no significant change concerning the part of the EIDHR I budget reserved for this region; about 26% of the EIDHR I micro-project funding was allocated to the region every year (except for 2003 when it represented almost 37% of the total micro-project budget). The number of countries covered by EIDHR I micro-projects (16) is probably going to decrease to 11 under EIDHR II, with Cuba eligible for CBSS only from 2008. The CBSS budget shares are equal to those of Asia and Central Asia.
- *Latin America*: Most countries in the region did not take part in EIDHR micro-projects until the year 2005. At the same time, there was a steady decrease in EIDHR I funding going to this region: from 16.6% in 2002 (concerning only three countries - Colombia, Guatemala. and Mexico) to 13.9% in 2005 and 11.6% in 2006 (concerning already 8 countries). As in Asia, the proportional part of the EIDHR I budget per country was decreasing. Under the EIDHR II CBSS scheme, the number of countries eligible from this region is going to increase to 17 (*Central and Latin American countries*), nine of which are eligible only from 2008; the CBSS budget shares are equal to those of Asia and Central Asia and of ACP countries.

As to the target countries of this research project, namely *Bosnia and Herzegovina, Ukraine, Belarus and Cuba*, both Bosnia and Herzegovina and Ukraine have been eligible for EIDHR I micro-project funding since 2002, and the amount spent on local micro-projects increased over the period 2002-2005 (from € 0.5 million in 2002 to € 0.855 million in 2005 in Bosnia and Herzegovina, and from € 0.6 million in 2002 to € 1.025 million in 2005 in Ukraine). Nonetheless, in 2006 a slight decrease of funding can be observed; there were only € 0.615 million for Bosnia and Herzegovina and € 0.95 million for Ukraine. The decrease has two main reasons. First, the total EIDHR I micro-projects budget in 2006 was lower than in 2005 (from € 35.5 million in 2005 to € 30 million in 2006), and accordingly all country allocations were cut. Secondly, in both cases, the decrease concerned *Campaign 2 (Fostering a Culture of Human Rights)*, which seemed to be less important in the given circumstances as both countries were assessed to be making significant progress in this area. Resources for *Campaign 4 (Advancing Equality, Tolerance and Peace)* remained the same or received even more funding than in 2005.

⁵⁹ The new country eligible for EIDHR II from 2008 is the Philippines.

Concerning Belarus and Cuba, neither country was eligible for EIDHR I micro-projects funding until 2005. The amount of EIDHR I resources reserved for micro-projects in these countries was lower in 2006 than in 2005. In the case of Belarus, the allocation remained rather stable (decreasing from € 0.42m in 2005 to € 0.4m in 2006) despite the fact that there was globally less funding for micro-projects in 2006 than in 2005. Less priority was given to *Campaign 2* in 2006 than in 2005 (with funding falling from € 0.22m to € 0.15m), while the majority of the country micro-projects allocation was channelled to projects under *Campaign 4* (an increase from € 0.2m to € 0.25m in 2006). In the case of Cuba, the decrease in micro-projects funding is evident, falling from € 0.235m in 2005 to € 0.15m in 2006 (only under *Campaign 2*) owing to difficulties on the ground in finding credible local NGOs and to the delicate political situation of the EC Delegation in Cuba⁶⁰. With the facilities and measures introduced under EIDHR II, an increase of micro-projects funding is likely to both Belarus and Cuba (under CBSS, both are eligible only from 2008).

European Foundation for Democracy through Partnership (EFDP)

The idea⁶¹ to establish a foundation through which a part of EU democracy assistance would be granted to civil society organisations emerged in connection with the debate on EIDHR I reform with the direct involvement of the European Parliament Democracy Caucus⁶², the NGOs and some of the member states.

Several foundation initiatives were originally tabled. The issues in the debate were at the beginning namely of what type of organisation the foundation should be, its geographical focus and balance. Open Society Institute (OSI) Brussels at first came up with its own initiative but gradually focused rather on the Financial Regulation and Implementing Rules amendments and EIDHR II legal basis⁶³. The Policy Association for an Open Society (PASOS) promoted a grant-making foundation model. An initiative was tabled by The Netherlands Institute for Multi-party Democracy (IMD), backed by the Westminster Foundation for Democracy (WFD)⁶⁴. At a meeting with the representatives of European political foundations on 7 February 2006, the European Parliament's Democracy Caucus invited IMD and the WFD to submit a proposal for establishing the European Foundation for Democracy through Partnership.

⁶⁰ More details on Cuba (and the criticism of the EC Delegation by European civil society groups), see below.

⁶¹ The idea was not new. The foundation of EuropeAid in 2001 helped to make the system faster and more flexible. Many argued for the importance of such a foundation to improve the EIDHR system: "The establishment of a European foundation(s) to support democratisation and civil society is worth serious consideration as an opportunity to step up EU activity in this field. International practice suggests that private foundations that receive public funding are one of the best ways of supporting civil society in foreign countries." (Raik, 2006)

⁶² An informal pressure group consisting of several MEPs of different political affiliations; its main figure has been Edward McMillan-Scott, the current Vice-President of the European Parliament.

⁶³ They perceived a window of opportunity was closing down and that it was not constructive to lobby for a separate foundation when pushing for several issues within the EIDHR II legislation (like lowering the minimum grant amount). Furthermore, OSI did not have a unified position on the foundation initiative.

⁶⁴ Later on, WFD removed its support, possibly owing to the pressure from other political party foundations.

An informal group of like-minded countries emerged in the Council in order to promote the foundation idea, which was supported by several high-profile personalities including Václav Havel, Jacques Delors and Richard von Weizsäcker. The impulse came from the Czech Republic, which supported the idea of a grant-making foundation, and the group consisted of the Czech Republic, Sweden, UK, the Netherlands, Poland and Slovakia (within the V4 countries, Hungary adopted a different approach). The idea was to provide the foundation with a direct allocation from Objective 3 of EIDHR II (promoted by the Dutch). The member states involved originally agreed to contribute to the foundation's budget, and € 2 million from a Dutch lottery company should have been allocated into its budget as well.

David French of the Westminster Foundation for Democracy and Roel von Meijenfeldt of the Netherlands Institute for Multi-party Democracy argued that a new foundation “would establish an operational facility at arm's length from the institutions of the EU, capable of timely responses to demands where and when they are most needed”, and “should provide a flexible funding instrument to support democratic reform processes and programmes, capable of operating at a greater level of suppleness, responsiveness and risk”.⁶⁵

However, the idea of direct funding from EIDHR II was scrapped in the Council (and opposed by the Commission, too). The member states dissenting from the idea pointed to the fact that the funding could be obtained through the regular grants and tenders (macro-projects, operational costs grants). When EIDHR II regulation was adopted, the informal group supporting the EFDP idea shrunk to the Czech Republic and Poland⁶⁶. Further on, the group of supporting member states increased to include Latvia. However, the necessary critical mass of supporting member states was not achieved; another complication in the deliberations was that all the “old” member states originally involved in the like-minded group gradually backed away. With the support of only “new” member states, combined with pressure against it from the German EU Presidency, the initiative lost its attraction to the hesitant member states.

Despite the presence of European Commission President José Manuel Barroso at the launch ceremony of the EFDP on 15 April 2008, the EU has not committed to financing the foundation. Some argue that this is due to the EU's tendency to assign less importance to democracy promotion than to development aid, a tendency evident in the speech of Barroso at the launch ceremony: “However, [political pluralism, social justice and respect for human dignity] will be achieved only if we first succeed in reducing poverty and injustice.”⁶⁷

The EFDP had been pushed forward by several MEPs (Edward McMillan-Scott, Janusz Onyszkiewicz, Jan Marinus Wiersma), some of the member states, and several influential NGOs. The situation changed in the European Parliament during the course of 2006, and the

⁶⁵ *A European Foundation for Democracy through Partnership*, Netherlands Institute for Multiparty Democracy, March 2006

⁶⁶ What kind of deal was struck was not possible to find out: the German Presidency, lobbied heavily by the German political foundations, played a crucial role in the decision.

⁶⁷ J.M. Barroso, Speech at the launch ceremony of the European Foundation for Democracy through Partnership in Brussels, 15 April 2008.

window of opportunity closed⁶⁸. The informal Democracy Caucus proved to be politically overstretched. The political foundations, especially the German foundations, mainly the Konrad-Adenauer-Stiftung and the Friedrich-Ebert-Stiftung, have continuously been lobbying MEPs (and some of the member states) both for inclusion of political parties and political foundations into the definition of civil society⁶⁹ within the EIDHR II Regulation⁷⁰ and against the idea of EFDP⁷¹.

In October 2006, the political foundations also established a formal network registered in Belgium - European Network of Political Foundations (ENOP) - aiming at better and concerted representation in Brussels and using this legal body to become an important partner for the Commission in civil society dialogue, as well as to achieve the possibility to apply for funding.

The German political foundations won support for their cause from a number of MEPs, including very influential ones such as German Christian Democrat Michael Gahler and Dutch socialist Jan Marinus Wiersma, a previous supporter of the European Foundation idea. The German government, reluctant towards the EFDP from the very beginning, finally proved - for obvious reasons - to be the main motor behind the gradual disappearance of the general support for the EFDP.

Nevertheless, representatives of the EFDP and supporters of the cause must share part of the responsibility, too, for this failure. As one MEP involved in the process of setting up the EFDP put it, the proponents of the EFDP totally underestimated the influence of the political foundations. They were confident about the support for the initiative from the relevant European political bodies and neglected dialogue with the political foundations. The EFDP representatives did not enter into complex negotiations with the political foundations while assuming they would automatically perceive the EFDP as a competitor. The EFDP protagonists also underestimated the importance of Germany in relation to any debate concerning the spending of EU money. Talks should have been held with the German government in the early stages, especially in light of the fact that it was preparing to hold the EU presidency in 2007.

There is allegedly an ongoing debate within the (still active) European Parliament Democracy Caucus about the possibility of setting up a European Democracy Fund⁷², which would be

⁶⁸ The European Commission also opposed the idea of financing directly an institution/foundation from the EIDHR budget. Furthermore, the Commission has to take into account the interest of the Council in programming the EIDHR, and if the EFDP were funded directly (with the oversight partly by the European Parliament, which can operate more politically), the Commission would have lost control over the expenditure. The Commission and the Council were in the end allies in blocking this mechanism.

⁶⁹ For example, the speech of Elmar Brok (EEP-ED, CSU, Germany) at the AFET meeting on 13 September 2006

⁷⁰ On both points successfully

⁷¹ Besides the Germans, also the British and the Dutch supported the arguments of the political foundations and withdrew their support for the EFDP.

⁷² The reasoning behind the idea of establishing a clearing house and to develop the expertise to work with the Commission is again the need for flexibility of funding in order to facilitate the use of money in political hotspots (the European Parliament by its nature takes a more political approach to solving crisis situations or

partly run by the European Parliament and which would also act as a clearing house for other institutions and foundations; but the democracy assistance agenda has lost momentum in the European Parliament, and the MEPs engaged in the initiative were called upon to respect party discipline and interests⁷³. The European Parliament is also setting up an independent instrument for training of third countries' parliamentarians, focusing mainly on the Western Balkans, reviving a similar programme previously run together with the Council of Europe⁷⁴. The competition in the field of foundations is also growing; this year all the political families in the European Parliament should receive funding to set up their own political foundations, which will not be directly involved in democracy assistance but might get involved in the future.

Despite all the obstacles, the European Foundation for Democracy through Partnership (later re-named European Partnership for Democracy, or EPD, to avoid confusion with the already existing European Foundation for Democracy) was established in Brussels on 15 April 2008 with the support of former Czech President Václav Havel and European Commission President José Manuel Barroso. The new foundation includes Board members from Finland, the Netherlands, France, Germany, Poland, the Czech Republic, Slovakia, and Portugal, combining old and new, and large and small, eastern and southern EU members.

The foundation contains a grant-making element and mechanism, and it has opted for a multi-annual programming dialogue. EFDP shall be fully operational in 2009⁷⁵, when it can also start competing for EU grants and tenders.

Is there a future for the “foundation idea”?

Some argue⁷⁶ that the idea of a foundation (or the very European Foundation for Democracy through Partnership), managing part of the EU democracy assistance budget, can be revived in connection with the mid-term evaluation of the EDIHR II, which is envisaged for 2009 (the EIDHR II Strategy Paper runs until 2010). In the light of the mid-term evaluation findings, the EIDHR II Regulation could be modified.

A foundation supporting analysis and evaluation of use of funds would not fall on deaf ears if the Commission should prove slow or rigid in delivering the assistance, and in availing itself fully of the flexibility provided for by the amended Financial Regulation and Implementing Rules, as well as the EIDHR II legislation. If a crisis situation, or other urgent need for action,

tackling regimes of all kinds), and to make possible the allocation of small grants. Such a clearing house (co-ordination institution) would help to tackle issues quicker and try to get the status of privileged partner of the Commission.

⁷³ For example, one of the Democracy Caucus members is involved in the European Foundation for Democracy and Solidarity steering committee, a co-ordination platform for social democratic parties in Europe interested in democracy development (political foundations of this political orientation are also members).

⁷⁴ Edward McMillan-Scott MEP should be in charge of the new programme.

⁷⁵ As to the geographical focus of its activities, the principle “who provides funds, sets priorities” will most probably be applied, which can be seen as problematic.

⁷⁶ For example by Edward McMillan-Scott MEP, an influential member of the Democracy Caucus in the European Parliament and a heavyweight figure behind the establishment of the European Instrument for Democracy and Human Rights.

were not managed well, it could substantiate perception that the Commission staff is unable to deliver assistance under such circumstances and strengthen the case for a more flexible body, either a foundation or an agency, from the perspective of the member states. However, it seems highly unlikely that the idea would rise to the top of the agenda before the mid-term evaluation is completed⁷⁷.

Arguments concerning a re-launch scenario

- It is quite likely that any efforts to empower the EPD (formerly EFDP) in connection with the mid-term evaluation will meet resistance from the side of the political foundations again and that in the light of the emergence of the foundations linked to the European Parliament's political fractions, the Parliament (or a group of MEPs) will be less willing to support the idea than in 2006.
- It is questionable whether the mid-term evaluation in 2009-2010 will provide much room for change since the Commission will be very hesitant to deal with the whole assistance structure again; generally no systemic changes are expected - only adjustments or amendments of existing documents. Due to delays in launching EIDHR II calls for applications, the number of projects and outcomes to evaluate will also be limited.
- The arguments for a foundation using as a template the US-based National Endowment for Democracy, tabled by the Czech representatives, might be counterproductive since anti-American feelings are quite common in the European Parliament (and elsewhere). In this light, the recent debates on the US radar and missile bases in the Czech Republic and Poland did not add credibility to the position of these two member states that were supporting the EPD (although the conflict between Russia and Georgia that commenced in August 2008 looks set to turn public opinion in both countries in favour of the bases, and may have an impact on other countries' stances towards the USA, not least with a new President entering the White House in January 2009). At least until the Georgia crisis, it was observable that the agenda connected to human rights and democracy promotion had gradually receded from the priorities of the Czech Presidency of the EU (January-June 2009) and that the Czech government was adopting a general attitude of "wait and see" until the mid-term evaluation.
- In 2009, a new European Commission will be appointed and elections will be held for a new European Parliament; the Parliament election campaign will run through the spring of 2009 and it is rather unlikely that substantial support will be generated for the EPD during this period.
- The European Commission will not be willing to give up control of funding (a more elaborated oversight mechanism can be proposed, for instance).

⁷⁷ See also the following section.

- A foundation financed overwhelmingly by the EU would be perceived as an actor similar to the European Commission in third countries; in the discussion, the value added of such a setting would have to be emphasized.
- Democracy assistance and civil society support are a political issue: it is unlikely that no conditions would be imposed on the foundation *ex ante* by the Commission and the member states. Member states want to control allocations for democratic assistance to respective countries according to their diverse strategic preferences (e.g. the difference between the Czech Republic and Spain regarding the need to provide democratic assistance in Cuba).
- Member states' support - a critical mass of member states supporting the idea would have to be created.
- Political foundations (and major political groups) have to be involved in any attempt to revive the EPD as a pan-European body financed directly both from governments' and EU money. The EPD should embrace dialogue with the political foundations.

The independent mid-term EIDHR II assessment should focus on:

- Practical issues with the focus on flexibility at the centre (ability to act effectively in countries like Belarus or Cuba): calls for proposals are not being translated into local languages, which substantially affects the access of grassroots NGOs to the funding; the number and size of grants awarded - support should aim at grassroots initiatives rather than at institutionalised NGOs; it is necessary to administer, as provided for by the new implementing rules and financial regulations, small grants (€ 10,000-25,000), and the progress should be monitored to identify whether the number of these type of projects is increasing (small grants represent the same workload as big grants, so the Commission logic usually prefers bigger grants).
- Division of labour within the EC Delegations and staffing (the Commission has limited capacity to provide for the small grants - one EC delegation desk officer usually deals with calls, evaluation and reporting, and the situation concerning the number of staff will not improve in the near future⁷⁸).
- Cost-effectiveness of establishing a new body: a study comparing the costs of a foundation versus increasing the number of Commission staff; for many member state governments, cost-effectiveness is the key issue in deciding on lobbying for one or the other option (cost-effectiveness can be a dilemma even for the governments that have already lobbied for the EPD).
- Foundation versus agency discussion: is a Commission agency with purely executive tasks a better solution? Since democracy assistance is a political issue and every

⁷⁸ See EuropeAid Co-operation office Indicators 2007

member state has stakes there, the political say on programming documents would stay largely with the Council if an agency were established⁷⁹; no independent body (Foundation board) would be involved in programming. Discussion on different models would be necessary - for instance, on whether DE AIDCO or DG RELEX would exercise oversight.

Co-operation among the Visegrad Four governments

According to the interviews conducted for this research⁸⁰, any interaction or possible co-operation among the Visegrad Four countries in “shaping EU policies and instruments” - more specifically within negotiations on both EIDHR II and EPD (EFDP) in this case - seems to have been very limited. First, no system of sharing information was created that would have allowed the V4 governments to co-ordinate their efforts during the negotiations. Secondly, no special working group that would have had the same purpose as an information-sharing system was established. Thirdly, and most importantly, the V4 governments did not have common objectives or priorities. However, there were certain overlaps: for example, in pushing ahead the idea of the EFDP when Poland, Slovakia and the Czech Republic were co-operating - these countries had been leading supporters of the EFDP, contrary to Hungary. This specific case represents rather an exception than a standard interaction or co-operation on the level of the V4 governments.

Generally, all four countries stressed a need for a faster and more flexible system of funding (as did almost all other member states); each of the four governments had its own individual priorities. The Czech government stressed the importance of faster and more precise granting in the frame of Objective 1 and promoted greater support for individuals elected to national parliaments, including in those cases where they are not prevented from exercising their mandate. The Slovak government proposed to limit the part of the EIDHR II budget spent on EOMs and pushed for increasing the contingency fund allocation in order to enhance the capacity of the European Commission to deal with unexpected and crisis situations.

The Czech and Slovak governments also called for extending the EIDHR II funding to include persons or bodies without registered legal status. Concerning geographic considerations, the Czech Republic does not have any high-priority region for which it sought direct disproportional allocations. On the contrary, the Slovak government emphasized that the EIDHR II should pay more attention to the Western Balkans, Eastern Europe and countries covered by the European Neighbourhood Policy. Both governments, as well as many other member states, had been continuously consulting their own national NGOs before defining their own position for the negotiations on EIDHR II and the Strategy Paper 2007-2010. Some civil society proposals were incorporated into their respective negotiating positions, such as the possibility (included by the Czech Republic) for local NGOS specialising in election observation to draw funding under objective 5 of the EIDHR II.

⁷⁹ Depending on the type of agency, of course; if a “classical” agency were established then yes; on the other hand, in the case of an executive agency of the Commission, it is not usually the case.

⁸⁰ The following part is based on interviews.

Concerning the EPD issue, it seems at the moment that no significant support can be expected in the near future from the Czech or Slovak government for re-launching the idea of funding the EPD from EIDHR II. Although both countries were strong proponents of the idea of a new independent foundation dealing with part of the EIDHR II funding, they now prefer to wait and see and evaluate the first results of new EIDHR II implementation (perhaps even until the first mid-term evaluation in 2010) before returning to the idea. In addition, they consider that the concept of how the foundation would function has not been clearly defined. In short, the idea has not been abandoned yet, but any further support is currently off the agenda.

Democratic scrutiny process

The EIDHR II Regulation was adopted within the co-decision procedure allowing the European Parliament to pass a resolution to the effect that the Commission has exceeded the implementing powers conferred on it, once the commitology process is concluded and the final text submitted to the Parliament. Owing to the delay caused by the negotiations on the very existence of the instrument and the concerns about the timely adoption of the implementing documents and possibility to draw funding in 2007, the EIDHR II Strategy Paper 2007-2010 (similarly the ENPI implementing documents, IPA or Instrument for Stability implementing documents) was adopted through the “*Democratic scrutiny process*”, a fast-track procedure allowing for a parallel process of implementing legislation oversight.

The European Parliament revoked its right to take part in the annual programming of the new instruments: the Inter-institutional agreement adopted in 2006 was the basis for the “*droit de regard*”, which takes place in parallel with the commitology procedure (management committees - on EIDHR II Strategy Paper 2007-2010 or ENPI implementing documents). Parliament committees received all strategy papers at the same time as they were transmitted to the member states and within 30 days from their entry in the commitology register could express objections. In the meantime, consultations with the relevant Commission’s DGs were taking place (DG RELEX and DG AIDCO) in parallel with the commitology: a soft “structured dialogue” between the Parliament and the Commission was taking place⁸¹.

Working groups for Democratic scrutiny were established within the relevant Parliament (AFET) Committees (EIDHR II - Human Rights Sub-committee)⁸², such that the deliberations were underway before the Committee (AFET) meeting took place. When the soft dialogue was over, the letter with the conclusions of the working group was sent by the AFET chairman to the Commissioner for External Relations (Benita Ferrero-Waldner) and/or to the Development and Humanitarian Aid Commissioner (Louis Michel); the letter from the Commission followed.

When discussing EIDHR II Strategy Paper 2007-2010, the key concern of MEPs was that EIDHR II should not be deployed extensively in those countries where co-operation with the governments has been established, since in such cases other EU instruments, such as ENPI,

⁸¹ Draft strategy documents go to the European Parliament at the same time as they reach the management committees.

⁸² The disadvantage of this system is that the MEPs are rather reluctant to take part in these deliberations and the European Parliament’s positions are prepared instead by its Secretariat.

can be deployed for supporting civil society whereas EIDHR II should focus on cases such as Cuba or Belarus.

Summary

The reform of the financial instrument and legal basis (FR/IR) of EIDHR II allows for the improved flexibility and effectiveness of EU democracy assistance, but the real impact of the reform will be clear only when an evaluation is made of the implementation of EIDHR II.

The key strengths of the new framework include:

- keeping the principle that provision of assistance should be independent of the consent of third-country governments *and other public authorities*;
- new forms of assistance - support to *non-registered* entities, *re-granting* possibility, lower threshold for *grants of small amounts*, which allows for reduced administrative burden for civil society organisations;
- specific and especially *ad hoc measures*, which allow for supporting *human rights defenders* directly (together with a derogation from the rule that Community assistance cannot constitute profit to the recipients);
- projects may include *operations “out of country”* - in neighbouring countries;
- projects may use other “entry points”, such as social, economic and cultural issues, so long as the aim and the impact of the project relate to fundamental freedoms and human rights (an important provision in the case of Cuba);
- the condition of *EU visibility might be modified* if specifically justified and thus assure the safety of the beneficiaries and their families in countries where human rights are at risk;
- human rights defenders can be supported through the NGOs that know the situation on the ground better (although € 16 million for 2007-2010 for human rights defenders, including ad hoc measures, applicable worldwide, is not very ambitious);
- local civil society actors can be funded from Objective 5 (EOMs) when implementing electoral observations;
- the flexibility of the responsible officials is also enhanced in setting the eligibility criteria of local civil society actors.

Some questions and key criticisms remain unresolved:

- distribution of resources - further enlargement of geographical scope could be counterproductive;
- making EC Delegations directly responsible for management of a larger portion of EIDHR II projects - such a delegation of power could help to improve the quality of EU democracy assistance delivery, but the EC Delegations would have to be better equipped for these tasks;
- strengthened intra-and inter-EU institutional co-operation, and co-operation with other donors, for which corresponding implementing mechanisms are in some cases missing;
- the long evaluation process in centralised schemes (macro-projects) will most probably not change, which means loss of operational and quick-reaction abilities;

- EOMs - the EU sends missions only to countries where they are invited, so the whole EIDHR II idea that the action does not require government consent is denied within this priority, and the EOMs allocation consumes almost 25% of the total EIDHR II budget;
- synergy is not assured between EIDHR micro- and macro-projects, or with other EU-funded projects (in the social sector, for instance) - it would require not only co-operation when the programming of the instruments is taking place, but also during the project-monitoring phase;
- possibility to waive co-financing requirement in duly justified cases was not agreed;
- the role of the EC Delegations is not clearly defined in the programming and implementation of the EIDHR II (the EC Delegations report to Brussels the estimates for the micro-project allocations every year). It is also not clear how local consultation with civil society will be organised;
- generally, competitive procedures when awarding funding have to be maintained, so a significant increase in direct granting cannot be envisaged.

(ii) Instrument for Stability

Background

A new instrument, in place from 1 January 2007, the Instrument for Stability focuses on conflict prevention and crisis response through support for the installation of transitional governments, institution-building, setting up of international criminal courts and special national courts, as well as through the restoration and reconstruction of essential infrastructure, housing, public buildings and economic activity as well as basic production capacity, the rehabilitation and reintegration of victims of armed conflict, etc. The two overall objectives are: a) to contribute to stability in a situation of crisis or emerging crisis; b) helping build capacity both to address specific global and trans-regional threats with a destabilising effect, and to ensure preparedness to address pre- and post-crisis situations. The issues covered range from nuclear safety and non-proliferation through the fight against trafficking to organised crime and terrorism.

Legal basis

The regulation was adopted on 15 November 2006⁸³, and came into force as of 1 January 2007. The instrument's overall budget for 2007-2013 is € 2.062 billion.

Flexibility and reach

Community finance may take the form of projects and programmes, sectoral or general budget support, general import support programmes in exceptional cases, contributions to

⁸³ Regulation (EC) No 1717/2006 of the European Parliament and of the Council of 15 November 2006 establishing an Instrument for Stability

international funds, etc. Those eligible for funding include partner countries and regions, joint bodies (partner regions and the Community), international organisations, European agencies, bodies of any member state, regional organisations and non-state actors, including NGOs.

Trends

Suggestions have been made by conflict prevention NGOs and members of the European Peace-building Liaison Office (EPLO) to create a European Peace-building Co-ordinating Cell financed through the instrument.

B Geographical instruments with specific legal basis

(iii) European Neighbourhood and Partnership Instrument (ENPI)

Background

Until 2006, external assistance to the European Neighbourhood Policy (ENP) countries was provided under various geographical instruments: TACIS for Eastern Europe and Russia, and MEDA for Mediterranean countries. The countries were also eligible for funding under EIDHR I. As of 1 January 2007, TACIS and MEDA were brought under one budgetary roof - the new European Neighbourhood and Partnership Instrument (ENPI) covering also the Strategic Partnership with Russia⁸⁴. The principle of ENP country government consent and co-operation on the development of the country programme is a key element of ENPI.

The negotiations on the ENPI Regulation⁸⁵ were delayed owing to a clash over geographical prioritisation: a Non-paper of the V4 countries promoting the Eastern dimension of the ENP was presented in January 2007, with the Czech Republic and Poland most active, while at the same time some of the “old” member states preferred to focus on the South⁸⁶. The Regulation on the ENPI went into effect in December 2006. As a result of the delay, the Commission, in parallel with the negotiations on the Regulation, has been preparing the implementation, in the case of the ENPI, of all country and regional strategy documents. Besides the Democratic

⁸⁴ The ENPI is a very different instrument. TACIS, for example, used to be just technical assistance, while the ENPI adopts a different implementation method: it is basically government-to-government in principle; an incentive to reform is present.

⁸⁵ Regulation (EC) No 1638/2006 of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument

⁸⁶ Some diplomats from the “old” member states were criticising the lack of interest in the ENP Southern dimension in the “new” member states. Likewise, the MEPs from the “new” member states were rather less active within the ENP South Strategy Paper consultations. On the other hand, the joint pressure from Mediterranean member states (and NGOs) was concerted; the Mediterranean countries and their NGOs have been working together for a longer period of time; the “new” member states’ representatives in the Council and the European Parliament were not able to put counterarguments in the East vs. South allocations debate.

scrutiny process⁸⁷, informal consultations with the member states were launched in the context of the existing committees under the TACIS and MEDA regulations.

When the ENPI Regulation entered into force, informal consultations had to take place once more, and formally within the newly established ENPI management committee and in the European Parliament. For ENPI, the Commission submitted 19 Strategy Papers (Country Strategy Papers, Eastern and South Regional Programmes - Strategy Papers and Indicative Programme 2007-2010, Strategy Paper on Cross-border Co-operation and the Interregional Programme). The real clash between Eastern and Southern dimension supporters when ENPI was discussed emerged on the budget allocations, not on priorities.

As to civil society involvement⁸⁸, ENPI was generally seen as a tool for democracy-assistance delivery (DG RELEX, for example, does not see ENPI as an instrument for civil society). Again, a consensus could not be reached but on the principle of increasing Community assistance to the ENP countries as such: some NGOs, active in the Mediterranean, lobbied for enhanced support for ENPI South and vice-versa; some NGOs lobbied for keeping the principle for a separate budget for each ENP country (not on regional bases). As to the country allocations, the main concern was not the amount but rather the absorption capacity of the beneficiaries⁸⁹. The result in terms of balance and amount of funding was in the end rather satisfactory for civil society, but the way the money will be spent is another issue - and here the Commission maintained its view that the ENPI is not a democracy-assistance tool.

Framework and legal basis

- *Regulation (EC) No 1638/2006 of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument*
- 19 implementing strategy documents (Strategy Papers or Indicative Programmes 2007-2010)
- *Country Strategy Paper 2007-2013*: defines the strategic framework for implementation of community assistance for given ENP country.
- *National Indicative Programme 2007-2010* specifies priorities, objectives and results to be achieved as well as the indicative budget for the given period⁹⁰ for all countries concerned (10 Southern plus six Eastern). Not all priority areas mentioned in the National Indicative Programme will be covered every year in the 2007-2010 period; the number of areas will

⁸⁷ Two working groups were established in the European Parliament - ENPI South and ENPI East.

⁸⁸ Civil society actors' involvement in implementing ENPI is defined in Art. 2 of the ENPI Regulation: it defines the scope of Community assistance, which should also aim at fostering the development of civil society and of NGOs and supporting democratisation, inter alia, by enhancing the role of civil society organisations.

⁸⁹ In Belarus, for example, all activities financed under ENPI (including civil society actions) must be agreed by the government and thus it was disputable whether a suggested allocation of € 20 million over the 4 years could be drawn (Strategy Paper 2007-2010).

⁹⁰ Some argue that there are functional discrepancies in country allocations (South-East).

increase, but not continuously, in relation to the absorption capacity and the implementation of agreed reforms.

Multi-Country Programmes

Interregional Programme (Strategy Paper 2007-2013 and Regional Indicative Programme 2007-2010) - funds' activities to be implemented on an interregional basis for visibility, coherence and administrative efficiency reasons, supports dialogue and co-operation between EU and ENPI regions (East and South) and between the ENPI regions. Concrete implementing programmes are: TAIEX (technical assistance), SIGMA, Tempus, Student mobility (part of Erasmus Mundus), promoting co-operation between local actors in the EU and in the partner countries; and promoting implementation of the ENP and the Strategic Partnership with Russia; the programme is subject to a mid-term review in 2008.

Regional Programme East (Strategy Paper 2007-2013 and Regional Indicative Programme 2007-2010) - complements the Country Strategy Papers for the countries of the region; the principal objective is to tackle common cross-boundary challenges (sustainable development and environmental protection, energy security, transport development, security, migration, and the fight against organised crime), and to increase co-operation between countries and within the region (strengthening existing regional mechanisms and networks, and encouraging further co-operation; Russia is usually not part of the existing networks). The five Central Asian countries can benefit from this programme as well⁹¹. Five key priorities for the 2007-2010 period are: networks (transport, energy, and SMEs' regional co-operation); environmental protection and forestry; border and migration management and the fight against transnational organised crime; people-to-people activities; and clearing anti-personnel landmines and unexploded bombs remaining after war, and reduction of small arms and light weapons⁹². Regional co-operation for civil society dialogues was not included in 2007; only 5-10% of the € 223.5 million budget for 2007-2010 is allocated for regional co-operation of NGOs (i.e. roughly € 10-20 million).

Regional Programme South (Euro-Mediterranean Partnership) (Strategy Paper 2007-2013 and Regional Indicative Programme 2007-2010) - implementing three priorities of the Barcelona Process: a common area of justice, security and migration co-operation; a common sustainable economic area; and a sphere for socio-cultural exchanges. The Regional Indicative Programme gives general outline of concrete programmes, expected results and performance indicators.

Cross-border Co-operation (Strategy Paper 2007-2013 and Indicative Programme 2007-2010) - Cross-border co-operation programmes should support co-operation between member states and ENP countries along the external border of the EU⁹³. Four policy objectives are: promoting economic and social development in regions on both sides of common borders;

⁹¹ Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan; these countries are primarily eligible under DCI.

⁹² No specific strategy for Chechnya is envisaged.

⁹³ Until 2007 implemented under TACIS, MEDA, Phare and Interreg Programmes

addressing common challenges in the field of the environment, public health and the fight against organised crime; ensuring efficient and secure borders; promoting local cross-border people-to-people actions (a list of possible specific priorities is included). Three types of co-operation programmes are envisaged: land-border programmes; sea-crossing programmes; and sea-basin programmes. A mid-term review is envisaged in 2009.

Budget

The grand total of the indicative allocations for the period 2007-2010 is € 5,621.2 million (for the period 2007-2013 total budget of € 12 billion is envisaged), out of which € 400 million is assigned to the *Governance Facility and Neighbourhood Investment Fund*.

- *Cross-border Co-operation Programmes:* € 277.1 million. The ENPI CBC programmes will also be funded from the European Regional Development Fund. Total funding available for 2007-2010 should amount to € 583.28 million.
- *Interregional Programme:* € 260.8 million for 2007-2010. The biggest allocation goes to higher education and student mobility support (€ 208.6 million); TAIEX and SIGMA are allocated € 40 million; co-operation between local actors (to create lasting partnerships) is allocated only € 12 million.
- *Regional programme East:* € 223.5 million for 2007-2010, out of which 25-35% is allocated for the priority networks; 25-35% to environmental protection and forestry; 25-35% to border and migration management and the fight against transnational organised crime; 5-10% to people-to-people activities - a minimum of € 9.8 million (4.4% of the financial envelope) should be allocated to information and support activities with the aim to enhance the visibility of the EU in the ENP countries and to pursue opinion research there on the ENP as well as monitoring and evaluation of assistance under ENPI; 5-10% goes to clearing anti-personnel landmines and unexploded bombs remaining after war, and reduction of small arms and light weapons.
- *Regional Programme South:* € 343.3 million for 2007-2010, out of which: € 197.4 million will be dedicated to sustainable economic development; € 67 million to the social and cultural sphere; € 47 million to political priorities; and a sum of € 31.9 million is allocated for expenditure necessary to implement the Regional Indicative Programme as well as National Indicative Programmes of the ENP South countries.
- *Country Programmes*

<i>Country</i>	<i>EC assistance in 2006 in € million</i>	<i>EC assistance in 2007 in € million</i>	<i>ENPI Allocation 2007-2010 in € million</i>
Algeria	n/a	n/a	220
Armenia	17	21	98.4
Azerbaijan	22	19	92

Belarus	n/a	n/a	20
Egypt	127	137	558
Georgia	20	24	120.4
Israel	n/a	2	8
Jordan	67	62	265
Lebanon	16	50	187
Libya ⁹⁴	n/a	n/a	8
Moldova	42 ⁹⁵	40	209.7
Morocco	275	162	654
Palestinian Authority	330	n/a	632 ⁹⁶
Syria	n/a	n/a	130
Tunisia	72	72	300
Ukraine	100	120	494

Source: (European Commission 2006c, 2007c)

(iv) Instrument for Pre-Accession Assistance (IPA)

Background

IPA is a new financial instrument, replacing the 2000-2006 pre-accession financial instruments PHARE, ISPA, SAPARD, the Turkish pre-accession instrument, and the financial instrument for the Western Balkans CARDS, covering all pre-accession activities funded by the European Commission from January 2007 onwards. A series of three-year plans will be drafted, designing the implementation of funding; the needs of the candidate countries, their absorption capacity and their conditions for accession will be taken into account. IPA concerns the countries with EU candidate status (currently Croatia, the Former Yugoslav Republic of Macedonia, and Turkey) and the “potential candidates” (Albania, Bosnia and Herzegovina, Montenegro, and Serbia, including Kosovo).

Framework and legal basis

- *Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA)*
- Multi-annual indicative programme (three years) + Multi-annual Indicative Financial Framework (for the three forthcoming years, to be presented by the Commission to the European Parliament and the Council annually)⁹⁷

⁹⁴ Planned figure only: co-operation will be activated only when the necessary preconditions are in place, i.e. Country Programmes

⁹⁵ 2005-2006

⁹⁶ Planned figure only: co-operation will be activated only when the necessary preconditions are in place, i.e. Country Programmes

⁹⁷ Art. 7 of the Regulation No 1085/2006; Assistance under this Regulation shall be provided on the basis of multi-annual indicative planning documents established for each country in close consultation with the national authorities, so as to support national strategies and ensure the engagement and involvement of the country

- Annual programming - in co-ordination with the authorities of a given candidate (or potential candidate) country

Flexibility and reach

The assistance will support the following (selected) areas⁹⁸: strengthening of democratic institutions, as well as the rule of law, including its enforcement; the promotion and protection of human rights and fundamental freedoms and enhanced respect for minorities; the development of civil society; reconciliation, confidence-building measures, and reconstruction; regional and cross-border co-operation.

There are five programming components (the first two will apply both to potential candidate and candidate countries; the last three will apply only to candidate countries):

- Transition Assistance and Institution Building
- Regional and Cross-Border Co-operation
- Regional Development
- Human Resources Development
- Rural Development.

(v) Development and Co-operation Instrument (DCI)

Background

In September 2004 the Commission published its proposal on DCECI; the proposal was extensively changed in the Council and in the European Parliament's Development Committee. The main controversial issue was that the Commission proposal mixed policy for developing countries with policy for industrialised countries. The DCECI was subsequently split and two new instruments emerged, of which DCI was specifically geared to developing countries. Two separate regulations were considered, one for geographic programmes and another for thematic programmes, but this proposal raised problems with the legal framework, and in the end a single regulation was adopted.

concerned. Civil society and other stakeholders shall be associated where appropriate. Other programmes of assistance will also be taken into account.

⁹⁸ Art. 2 of the Regulation No 1085/2006

Flexibility and reach

Thematic programmes included in DCI:

- Investing in People
- Migration and Asylum
- Environment and Natural resources
- Food Security
- *Non-State Actors and Local Authorities*: non-state actors now have a joint programme with local authorities (a breakdown of funding was done); a provision guarantees that at least 85% of the funding for this programme goes to non-state actors.

The geographic programmes

The geographic component of the DCI provides assistance to developing countries in Latin America, Asia (including Central Asia), and the Republic of South Africa. It replaces the ALA programme for developing countries in Asia and Latin America, parts of the TACIS programme (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan) and the Programme for Reconstruction and Development in South Africa (EPRD), valid until 2006.

Main aims

- Consolidate and support democracy, the rule of law, human rights and fundamental freedoms, good governance, gender equality, and related instruments of international law.
- Foster sustainable development - including political, economic, social and environmental aspects in partner countries and regions, and particularly in the most disadvantaged among them.
- Encourage smooth and gradual integration into the world economy.
- Help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development, including measures to combat climate change and promote biodiversity.
- Strengthen the relationship between the Community and partner countries and regions.

The overall DCI budget for the period from 2007-2013 is € 16,897 million, of which € 10,057 million is allocated for geographic programmes. An indicative amount of € 465 million has been included to finance activities in the countries covered by ENPI. The programming for DCI and its geographical and thematic programmes is under way. Grants and tenders size are defined in the Annual Action Plans.

5. European Development Fund (EDF)

The EDF channels support to 78 African, Caribbean and Pacific countries and Overseas Countries and Territories. It is not financed from the Community budget but directly by the member states. The 10th EDF entered into force in January 2008. NGOs can apply. The budget for 2008-2013 is an estimated € 23.97 billion.

6. Target countries

(a) Belarus

Under ENPI, Belarus was allocated only € 20 million in 2007-2010, and funding must be agreed with the Belarusian government. Under EIDHR II, a country allocation is not known for Country-Based Support Schemes (CBSS) - starting only in 2008 - and other activities will be financed through special and ad hoc measures. Belarus could also be eligible under DCI (Thematic programmes) where an annual proposal without an overall strategy is made and the list of eligible countries is prepared by the DG DEV and consulted with the member states and the European Parliament.

For Belarus, a donor co-ordination mechanism has been put in place: co-ordination meetings with the USA, Canada and Norway take place every 3-4 months, when the “division of labour” is decided⁹⁹. Even after the FR/IR reform and the new EIDHR II Regulation, the effectiveness of the Commission in awarding small grants is disputable; likewise, the funding of the running costs of Belarusian NGOs will most probably remain rather difficult - the Commission wants to co-ordinate activities with the member states (Poland, Lithuania, Germany and Sweden were very active in this sense in the past) in terms of small grants and with the US donors in the field of running costs.

(b) Bosnia and Herzegovina

The Instrument for Pre-Accession Assistance (IPA) 2007 Project List for Bosnia and Herzegovina was adopted in July 2007 with a total budget of € 49.7 million; for *Axis 5 - Civil Society Dialogue* € 4.3 million has been allocated, with the actual allocation for civil society actors narrowed down to € 3 million. Civil society organisations can be eligible under some budget lines of Axis 1 and 2; however, this is not specified at the moment. Besides IPA,

⁹⁹ In the EU, the co-ordination with other donors, i.e. international organisations or the governments of third countries (USA, Canada, Japan) is in the competence of DG RELEX, for example within UN Democracy Fund - one donor co-ordination meeting per year takes place, or the “Paris agenda” (OECD-DAC); this type of co-ordination tackles only broader guidelines of assistance delivery.

Bosnia and Herzegovina civil society will probably also be eligible under ENPI (cross-border issues) and EIDHR II (CBSS only from 2008).

(c) Cuba

The political background is important in the case of Cuba (on Belarus, the member states' positions do not differ substantially). The EU Council carries out an evaluation of the situation on the island every June in connection with the partial embargo (put in place in June 2004 in response to the repression of opposition representatives, but lifted in June 2008). However, Cuba is not a great priority for member states other than Spain and the Czech Republic, which have adopted completely opposite stances¹⁰⁰, with Spain opposing even the partial sanctions and the Czech Republic arguing that the embargo should not be lifted without improvement in the human-rights situation in Cuba.

According to the EC Delegation in Havana¹⁰¹, keeping a low political profile is crucial for being operational on the spot. Furthermore, there is only limited absorption capacity on the part of civil society on the island (and failed US initiatives are testimony to the lack of a demand side). EC officials complain about the lack of eligible macro-projects tabled by EU-based NGOs under EIDHR I (lack of interest and lack of quality); in their opinion, European NGOs are not innovative enough in terms of strategies¹⁰² and, in the case of NGOs from the "new" member states, there is a perception that the experience of the transition process in central and eastern Europe is not applicable to Cuba and the templates of civil society assistance are not transferable¹⁰³.

Under EIDHR I, it was impossible to give direct grants to human rights defenders and to provide funding to non-registered entities. Generally, two schemes were in place (not political by definition); under decentralised co-operation (in order to avoid politics), a sustainable "culture" environment was promoted and supported. The promotion of social cohesion was funded from the EIDHR micro-project facility, although the instrument was not mentioned explicitly.

Civil society organisations were rather critical towards the EC Delegation in Cuba owing to the perceived lack of impact of the projects implemented through the micro-project grant applications administered in Havana. With the new rules, more flexibility should be achieved. Elites, which can assist in the transition to democracy, are key: EU-funded support should be available under EIDHR II (namely ad hoc measures and re-granting) and a trend to award grants without calls for proposal can be expected. EIDHR II will be the crucial instrument for

¹⁰⁰ Before reaching the high political level, negotiations take place namely within the Council working groups COLAT and COHOM.

¹⁰¹ Often criticised by the EU-based NGOs active on the island

¹⁰² According to this official, NGOs could even ask for derogations from the rules that applied on EIDHR I projects, especially in terms of registration of the potential benefiting partner organisations in Cuba.

¹⁰³ "Former communist countries do not understand that it is not desirable to talk about civil society development, not to shout loudly. EIDHR should not be mentioned - not be made the key instrument."

operations in Cuba (the CBSS will be launched only in 2008); the country will also be eligible for funding under DCI.

(d) Ukraine

Ukraine is eligible under ENPI: the *National Indicative Programme 2007-2010* is based on the EU-Ukraine Partnership and Co-operation Agreement (PCA) and EU-Ukraine Action Plan, and reflects the national priorities of the Ukrainian government (of the time of signing). Preferences were given to direct contributions to the country's budget (no EU control of the actual spending). € 494 million is allocated until 2010 under ENPI, the *Democratic Development and Good Governance* priority area is allocated € 148.2 million; out of its four sub-priorities only priority iii) *Human rights, civil society development and local government* is relevant to civil society organisations. Ukrainian NGOs can also be eligible under DCI Thematic programmes (Non-state Actors and Local Authorities) and will be eligible under EIDHR II (CBSS will be launched in 2007). The EU is the largest donor in Ukraine.

Note on Interviews

For the purpose of this paper, 20 interviews were conducted with officials and representatives of EU institutions (EU Council, European Commission and European Parliament), NGO representatives and member states' officials. The policy of confidentiality was followed. The author would like to thank all persons interviewed for their time and help. Any mistakes of analysis or interpretation of the facts are the author's sole responsibility.

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